

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ROBERT CHAMBERS,

Plaintiff,

v.

DECISION AND ORDER
06-CV-231S

LT. ROBERT WHALEN, et al.,

Defendants.

1. On February 7, 2008, Defendant Jeannette Whalen filed a Motion to Dismiss (Docket No. 38) pursuant to Federal Rule of Civil Procedure 12(b)(6). This Court issued a Scheduling Order directing that Plaintiff respond by March 28, 2008. (Docket No. 40). Plaintiff failed to respond.

2. On April 23, 2008, this Court issued a second Scheduling Order, directing Plaintiff to file a response to the Motion to Dismiss by May 16, 2008. (Docket No. 41). Further, the Court warned Plaintiff that failure to respond may result in Defendant's Motion being granted as unopposed. Id. Again, Plaintiff failed to respond.

3. On December 9, 2008, this Court issued a third Scheduling Order, directing Plaintiff to file a response to the Motion to Dismiss by January 5, 2009. (Docket No. 43). Further, this Court again warned Plaintiff that his failure to respond may result in Defendant's Motion being granted as unopposed. Id. Once again, Plaintiff failed to respond.

4. The standard for granting a motion as unopposed is contained in Local Rule 7.1(e). Local Rule 7.1(e) provides that:

upon any motion filed pursuant to Federal Rules of Civil Procedure 12, 56 or 65(a), the moving party shall file and serve with the motion papers a memorandum of law and an affidavit in support of the motion and the opposing party shall file and serve with the papers in opposition to the motion an answering memorandum and a supporting affidavit. *Failure to comply with this subdivision may constitute grounds for resolving the motion against the non-complying party.*

Local Rule 7.1(e) (emphasis added).

5. This Court finds that Defendant Jeannette Whalen's Motion to Dismiss is granted as unopposed pursuant to Local Rule 7.1(e). It has almost been one year since Defendant Whalen filed her motion, and Plaintiff has still not responded despite three Orders from this Court directing Plaintiff to do so. Further, this Court notes that, of the three Scheduling Orders that Plaintiff has disobeyed, two Orders explicitly warned Plaintiff about the consequences that may accompany the failure to respond. For these reasons, Defendant Whalen's Motion to Dismiss is granted as unopposed.

IT IS HEREBY ORDERED, that Defendant's Motion to Dismiss (Docket No. 38) is GRANTED as uncontested pursuant to Local Rule 7.1(e).

SO ORDERED.

Dated: January 6, 2009
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge